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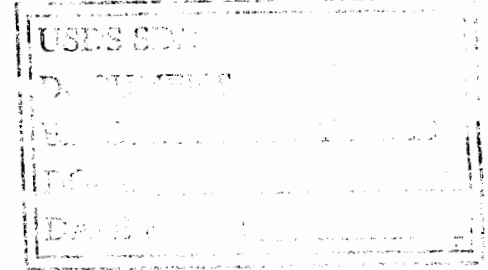
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April 5, 2013

Honorable Justice Kenneth M. Karas  
United States District Court  
Southern District of New York  
Federal Building and United States Courthouse  
300 Quarropas St., Chambers 533  
White Plains, NY 10601-4150



Re: Jeffrey Deskovic v. City of Peekskill, et al.  
07-CV-8150(KMK)  
07-CV-9488(KMK)

Dear Honorable Sir:

The undersigned represents proposed Intervenor-Plaintiff, New York Municipal Insurance Reciprocal (NYMIR) in connection with the above actions<sup>1</sup>. On December 3, 2012 NYMIR filed with the CM/ECF system a motion pursuant to Federal Rule of Civil Procedure Rule 24(a)(2) for leave to intervene in the above actions as a plaintiff. (Docket Nos. 543, 544, 545, 546 and 547). Together with its motion, NYMIR submitted a proposed complaint seeking a declaration, pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201, that it is no longer obligated to defend or indemnify its insureds, County of Putnam ("County") and Daniel Stephens ("Stephens"), in the above actions. For the reasons set forth herein, NYMIR respectfully seeks permission from the Court to be heard on the motion and for a pre-motion conference.

The above *Deskovic* and *McGarr* Actions seek to recover damages for damages for personal injuries sustained as a result of plaintiff Deskovic's allegedly unlawful investigation, prosecution and incarceration.

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<sup>1</sup> *Jeffrey Deskovic v. City of Peekskill, Putnam County, Westchester County, David Levine, Thomas McIntyre, Walter Brovarski, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh, Millard Hyland and Alan Tweed* (hereinafter "the Deskovic Action" or "Deskovic Complaint"). 07-CV-8150(KMK).

*Linda McGarr v. City of Peekskill, Westchester County, David Levine, Thomas McIntyre, Walter Brovarski, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh and Millard* (hereinafter "the McGarr Action"). 07-CV-09488 (KMK).

From the period January 1, 1995 to January 1, 1996 NYMIR insured the County under a Municipal Law Enforcement Liability ("MLE") policy. NYMIR has been affording the County and Stephens a defense in the above actions pursuant to a reservation of rights. NYMIR expressly reserved its rights to disclaim coverage for any injury that occurred outside of its January 1, 1995-January 1, 1996 policy period.

By letter dated September 27, 2011, counsel for Deskovic represented to this Court that his client intended to narrow his claims against Stephens and the County to include only the claims for Count II (fabrication), Counts IV and XII (state and federal malicious prosecution), Count VIII (failure to intercede) and County X (conspiracy).

By letter dated November 7, 2011, NYMIR advised the County and Stephens of Deskovic's counsel's statement that his client intended to narrow his claims and that the claims, as narrowed, were not covered under the 1995-1996 NYMIR MLE policy since all of the alleged acts and resulting injury occurred prior to the inception of the NYMIR policy.

By Opinion and Order dated September 25, 2012, this Court for the first time acknowledged and confirmed in Footnote 10 the fact that Deskovic had narrowed his claims against the County and Stephens. *Docket No. 505*.

#### **NYMIR'S PROPOSED MOTION FOR LEAVE TO INTERVENE**

NYMIR seeks leave to intervene in this action by filing and service of a Complaint seeking a declaration that it has no continued obligation to defend and/or indemnify Stephens or the County in the *Deskovic* and *McGarr* Actions. NYMIR's proposed motion for leave to intervene is based on the grounds that NYMIR has direct and immediate interests in the above action that are not represented by the parties to the action. NYMIR meets the four requirements for granting an intervention as of right.

##### **A. The Motion is Timely**

NYMIR's interests as an intervenor did not arise until plaintiff Deskovic narrowed the claims in his action against NYMIR's insureds, the County and Stephens. It is based upon this Court's acknowledgement of the narrowed claims that NYMIR's coverage obligations to the County and Stephens have changed. The discontinuance of these claims was never formally done or recognized until this Court issued its Opinion and Order dated September 25, 2012. *Docket No. 505 at FN 10*. Until it was formally acknowledged by this Court that plaintiff had narrowed his claims against NYMIR's insureds, a motion to intervene by NYMIR would have been premature.

Moreover, it is respectfully submitted that the timing of the application will not result in prejudice to any existing party inasmuch as no further discovery is necessary in order for this Court to decide the issues of insurance coverage, and more specifically whether NYMIR has any continued obligation to defend the County and Stephens in the main action, that are alleged in the proposed Complaint.

**B. NYMIR Has A Legally Protected Interest Relating To The *Deskovic* Action That May Be Impaired Absent Intervention**

Here, a disposition of the Underlying Action by means of a general tort verdict will impair NYMIR's ability to protect its interests. Thus, NYMIR has a legally protected interest relating to the *Deskovic* Action that may be impaired absent intervention.

**C. NYMIR's Interests Are Not Adequately Represented By Existing Parties**

NYMIR's interests in having its coverage obligations to the County and Stephens in the underlying action be determined are not adequately represented by other parties to the action. While the issues presented by NYMIR in its declaratory judgment complaint are intricately intertwined with the issues of the Underlying Actions and will not prolong or confuse the issues to that action, NYMIR is not similarly situated with any other party to the action.

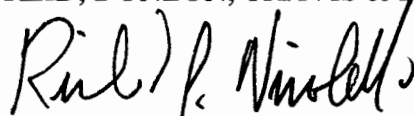
**D. An Independent Basis of Subject Matter Jurisdiction Is Not Necessary**

Since the intervention sought by NYMIR is as of right under Rule 24(a)(2), NYMIR need not show any independent basis for subject matter jurisdiction. *Assoc. of Contracting Plumbers of City of New York, Inc. v. Local Union No. 2*, 841 F. 2d 461 [2d Cir 1988]. Rather, this Court has supplemental jurisdiction over the issues raised in NYMIR's proposed complaint pursuant to 28 USC §1367(a).

For the reasons sets forth above, it is respectfully requested that this Court permit proposed Intervenor-Plaintiff NYMIR's motion (filed under Dockets Nos. 543 through 547) to be heard. NYMIR also respectfully requests that the Court schedule a pre-motion conference.

Respectfully submitted,

CONGDON, FLAHERTY, O'CALLAGHAN,  
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RICHARD J. NICOLELLO (RN4619)

RJN/asd

cc: All Counsel -  
See annexed Rider

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*NYMIR's motion to intervene  
is granted, as the Court has  
received no objections. The  
clerk is respectfully requested  
to terminate the motion. (Doc #543).  
So ordered  
4/18/13*

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